IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3705 OF 2007

In

SUIT NO.2802 of 2005

WITH

NOTICE OF MOTION NO.4055 OF 2007

In

NOTICE OF MOTION NO.3705 OF 2007

In

SUIT NO.2802 OF 2005

Anil Hukumchand Bhatia : Plaintiff

V/s.

Ashokkumar Hukumchand Bhatia & Ors. : Defendants

And

Mrs.Daisy H. Ichhaporia & Anr. : Respondents

...

AND

NOTICE OF MOTION NO.3082 OF 2007

In

SUIT NO.2802 OF 2005

Anil Hukumchand Bhatia : Plaintiff

V/s.

Ashokkumar Hukumchand Bhatia & Ors. : Defendants

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Mr.A.H.Shah i/b. Mr.S.A.Shah for the plaintiff.

Mr.S.P.Dubey for defendant nos.1 to 3.

Mr.D.V.Devkar, 1st Asstt. to Court Receiver, with

Mr.C.R.Bhogaonkar, 2nd Asstt. to Court Receiver (present).

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CORAM : S.A.BOBDE, J.

DATE : NOVEMBER 23, 2007.

P.C.

1. Notice of Motion no.3705 of 2007 is taken out by the plaintiff, inter alia, for possession of flat no.20, Anil Chambers, 6, Cinema Road, Mumbai--400 020, pending the suit. The suit is filed by the plaintiff against the respondents-trustees of a private trust of the father of the plaintiff and the defendant no.2 created under a Deed of Settlement dated 22.1.1968. In the plaint, the plaintiff has, inter alia, prayed for removal of the present trustees. The plaintiff who is admittedly a beneficiary of the family trust seeks accommodation in one of the flats of the trust.

2. Pending the present suit, the plaintiff has been granted possession of flat no.20, hereinafter referred to as the "flat in question" by an ad-interim order. Upon perusal of the ad-interim order and the earlier orders of this Court, I find that as many as on four occasions, this Court has unequivocally upheld the plaintiff’s right to

reside in one of the flats of the trust. In fact, before the learned single Judge of this Court on 25.1.2006, the defendants gave an undertaking that as soon as any flat premises falls vacant, the same will be handed over to the plaintiff. The other orders are in Notice of Motion no.1905 of 1992 and Review Petition no.29 of 1997 decided on 27.8.1997.

3. Mr.Dubey, the learned counsel for the defendants, denied the extent of the plaintiff's share in the benefits claimed by him. According to Mr.Dubey, it is not 50% but only 20%. It is obvious that the basic character of the plaintiff as a beneficiary is not denied, but only the extent of his share is denied.

4. In these circumstances, there is no reason to deny any accommodation to the plaintiff on this count. Mr.Dubey further submits that the other beneficiaries ought to be allowed to stay in the flat in question. He cites the instance of one nephew i.e. Suresh Bhatia who often visits Mumbai. Mr.Shah, the learned counsel for the plaintiff, on instructions from the plaintiff, who is present in Court, states that the said nephew can stay with the plaintiff in the flat in question any time he visits Mumbai. It is, therefore, not necessary to deny any relief to the plaintiff on this count also. In this

view of the matter, there is every reason to confirm the ad-interim order passed by this Court. I hereby allow Notice of Motion no.3705 of 2007 in terms of the relief granted in the ad-interim order.

5. Notice of Motion no.4055 of 2007 has been taken out by the defendant no.2 for vacating the ad-interim order. That Notice of Motion is hereby dismissed.

6. Notice of Motion no.3082 of 2007 has been taken out by the plaintiff for appointment of Receiver. However, the learned counsel for the plaintiff does not press the same. The said Notice of Motion no.3082 of 2007 is hereby dismissed.

7. At this juncture, the learned counsel for the plaintiff, very fairly states on instructions from the plaintiff that room no.6-C may be handed over back to the defendants. The Court Receiver is, therefore, directed to take possession of room no.6-C in the suit building and hand over the possession of the same to the defendants.

8. Order accordingly.

S.A. BOBDE, J.